

AMENDED IN SENATE MARCH 24, 2014

SENATE BILL

No. 1019

Introduced by Senator Leno

February 14, 2014

~~An act to amend Section 71113 of the Public Resources Code, relating to the environment.~~ *An act to add Section 19094 to the Business and Professions Code, relating to business.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1019, as amended, Leno. ~~Environmental Justice: Working Group.~~ *Upholstered furniture: flame retardant chemicals.*

Existing federal law requires the Consumer Product Safety Commission to institute proceedings for the determination of an appropriate flammability standard if the commission finds that such a standard, including labeling, for a fabric, related material, or product, may be needed to protect the public. Existing federal law authorizes a state to establish a flammability standard if, among other things, it provides a higher degree of protection from the risk of fire.

Existing state law, the Home Furnishings and Thermal Insulation Act, provides for the licensure and regulation of upholstered furniture manufacturers by the Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation. Existing state law requires every upholstered-furniture manufacturer to hold a furniture and bedding manufacturer's license. Existing state law also requires every upholstered-furniture retailer to hold a retail furniture dealer's license. A violation of the act is a crime.

Existing state law requires upholstered furniture and bedding to contain a specified label that is securely fastened in a manner approved by the bureau in an area open to visible view. Existing state law

establishes a standard to produce upholstered furniture which is safer from the hazards associated with smoldering ignition. This standard provides methods for smolder resistance of cover fabrics, barrier materials, resilient filling materials, and decking materials for use in upholstered furniture.

This bill would require an upholstered-furniture manufacturer of covered products, as defined, to indicate whether or not the product contains added flame retardant chemicals, as defined, by including a specified statement on that label. The bill would also require the upholstered-furniture manufacturer of any covered product sold in California to provide point-of-sale signs containing the aforementioned statement to the upholstered-furniture retailer for each product shipped to California. For in-store sales in California and for Internet and paper catalog sales to California, the bill would require the upholstered-furniture retailer in California to display the point-of-sale sign in a specified manner.

If flame retardant chemicals are added to covered products sold in California, the bill would require the upholstered-furniture manufacturer to make good faith efforts to determine the various flame retardant chemicals used in its products and report this information to the bureau. The bill would require the bureau to make this information publicly available on its Internet Web site.

The bill would require the upholstered-furniture manufacturer of the covered product to retain sufficient documentation to show the chemicals added to a covered product or component. If no flame retardant chemicals were added to the covered product sold in California, the bill would require the upholstered-furniture manufacturer of the covered product sold in California to retain documentation that no flame retardant chemicals were added. The bill would provide that a written statement by the supplier of each component of the furniture, attesting under penalty of perjury that no flame retardant chemicals were added, is sufficient to make this showing. By expanding the crime of perjury, the bill would impose a state-mandated local program.

Upon request, the bill would require an upholstered-furniture manufacturer of a covered product sold in California to provide to the bureau, within 30 days of the request, documentation establishing the accuracy of the flame retardant chemical statement on the label and sign. The bill would require the bureau to provide the Department of Toxic Substances Control with samples of the covered product or components thereof sold in California from products marked “contains

NO added flame retardant chemicals” for testing for the presence of added flame retardant chemicals. If the department’s testing shows that a covered product labeled as “contains NO added flame retardant chemicals” is mislabeled because it contains added flame retardant chemicals, the bill would authorize the bureau to assess fines for violations against upholstered-furniture manufacturers of the covered product and component manufacturers. The bill would also authorize the bureau to assess fines for failure to maintain the required chain of custody documentation.

The bill would require the bureau to assess fines for certain violations and would additionally authorize the bureau to issue a citation including a citation with a fine for certain violations, as specified. The bill would authorize the bureau to make this citation information available to the public. The bill would also make it the duty of the bureau to receive consumer complaints.

The bill would authorize the bureau to adopt regulations in order to carry out these provisions.

Because a violation of the bill’s requirements would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law requires the Secretary for Environmental Protection, on or before January 1, 2002, to convene a Working Group on Environmental Justice, composed of various representatives, as specified, to assist the California Environmental Protection Agency, to develop, by July 1, 2002, an agencywide environmental justice strategy, and requires the working group to examine existing data and studies on environmental justice, make recommendations to various entities, and hold public meetings, among other things.~~

~~This bill would require the secretary to reconvene the working group by January 1, 2016, to redevelop, by July 1, 2016, that agencywide strategy and to review and update or revisit actions by April 1, 2016, that were required to be undertaken by the original working group.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 *SECTION 1. The Legislature finds and declares all of the*
2 *following:*

3 *(a) In 1975, California implemented Technical Bulletin 117,*
4 *which requires that materials, such as polyurethane foam, used*
5 *to fill furniture be able to withstand a small open flame for at least*
6 *12 seconds.*

7 *(b) Flame retardant chemicals are used widely in upholstered*
8 *furniture to meet the flame retardant standards of California*
9 *Bureau of Electronic and Appliance Repair, Home Furnishings,*
10 *and Thermal Insulation Technical Bulletin 117.*

11 *(c) People are exposed to flame retardant chemicals in multiple*
12 *ways, including when the chemicals migrate from furniture and*
13 *other consumer products into air and dust in the home or*
14 *workplace.*

15 *(d) Some of these chemicals can persist in the environment,*
16 *bioaccumulate in people and animals, and have been shown to*
17 *cause adverse developmental effects in animals and humans.*

18 *(e) A study by the California Environmental Protection Agency*
19 *found that women in California have much higher levels of toxic*
20 *flame retardants in their breast tissue than women in other states*
21 *and countries. Studies published in the journal of Environmental*
22 *Research show that children in California have much higher levels*
23 *of flame retardant chemicals than children elsewhere in the*
24 *country.*

25 *(f) A study published in the Journal of Occupational and*
26 *Environmental Medicine concluded that firefighters have a*
27 *significantly elevated risk of cancer that may be attributed to toxic*
28 *chemicals they inhale, including flame retardants.*

29 *(g) California consumers have become increasingly concerned*
30 *about the potential adverse human health impacts due to exposure*
31 *to certain chemical flame retardants. Various studies have linked*
32 *exposure to flame retardants to cancer, lower IQs and attention*
33 *problems, male infertility, male birth defects, and early puberty*
34 *in girls.*

35 *(h) In 2012, the Chair of the Federal Consumer Product Safety*
36 *Commission, testified to Congress that “the fire-retardant foams*
37 *did not offer a practically significant greater level of open flame*
38 *safety than the untreated foams.”*

1 (i) In 2012, the Chicago Tribune published a series of
2 investigative reports that showed that the claims of the efficacy of
3 flame retardants in furniture misrepresent the science.

4 (j) In 2012, Governor Brown asked of the Bureau of Electronic
5 and Appliance Repair, Home Furnishings, and Thermal Insulation
6 to review the state's four-decade-old flammability standards and
7 recommend changes to reduce toxic flame retardants while
8 continuing to ensure fire safety.

9 (k) The Bureau concluded that the presence of flame retardant
10 chemicals in furniture does not provide a meaningful fire safety
11 benefit. In 2013, the Bureau of Electronic and Appliance Repair,
12 Home Furnishings, and Thermal Insulation promulgated
13 regulations, revising Technical Bulletin 117 to allow furniture
14 manufacturers to meet a smoldering standard. The revised
15 Technical Bulletin 117-2013 provides improved fire safety
16 standards without the use of flame retardant chemicals.

17 (l) California consumers have voiced a desire to purchase
18 furniture that complies with Technical Bulletin 117-2013 but does
19 not contain flame retardant chemicals.

20 (m) Technical Bulletin 117-2013 can be met with or without the
21 use of flame retardant chemicals, but consumers currently have
22 no way to know whether flame retardant chemicals have been
23 added to the product.

24 (n) It is, therefore, the intent of the Legislature in enacting this
25 measure to provide California consumers clear information about
26 the furniture products they are purchasing, specifically concerning
27 compliance with fire safety standards and the absence or presence
28 of added flame retardant chemicals.

29 SEC. 2. Section 19094 is added to the Business and Professions
30 Code, to read:

31 19094. (a) For the purposes of this section, the following
32 definitions shall apply:

33 (1) "Component" means the separate constituent parts of
34 upholstered furniture sold in California, including, but not limited
35 to, cover fabrics, barrier materials, resilient filling materials, and
36 decking materials.

37 (2) "Covered products" means any flexible polyurethane foam
38 or upholstered or reupholstered furniture sold in California that
39 is required to meet the test requirements set forth in Technical
40 Bulletin 117-2013, entitled "Requirements, Test Procedure and

1 *Apparatus for Testing the Smolder Resistance of Materials Used*
2 *in Upholstered Furniture.”*

3 (3) “Added flame retardant chemicals” means flame retardant
4 chemicals that are present in any covered product or component
5 thereof at levels above 500 parts per million.

6 (4) “Department” means the Department of Toxic Substances
7 Control.

8 (5) “Consumer Price Index” means the Consumer Price Index
9 for All Urban Consumers published by the Bureau of Labor
10 Statistics.

11 (b) (1) (A) An upholstered-furniture manufacturer of covered
12 products shall indicate whether or not the product contains added
13 flame retardant chemicals by including the following statement
14 on the label described in Section 1126 of Title 4 of the California
15 Code of Regulations for covered products:

16
17 “This product meets California’s furniture fire safety standard
18 and:

19 _____contains added flame retardant chemicals

20 _____contains NO added flame retardant chemicals

21 The Bureau of Electronic and Appliance Repair, Home
22 Furnishings, and Thermal Insulation found that flame retardant
23 chemicals in furniture do not provide a meaningful fire safety
24 benefit. According to the Centers for Disease Control and
25 Prevention (CDC), such flame retardant chemicals can migrate
26 into air and house dust where people can be exposed to them.”

27
28 An upholstered-furniture manufacturer shall indicate the absence
29 or presence of added flame retardant chemicals by placing an “X”
30 in one of the appropriate blanks.

31 (B) This statement shall be included in the label described
32 in Section 1126 of Title 4 of the California Code of Regulations
33 in accordance with the bureau’s regulations for that label.

34 (C) Notwithstanding any other law, the bureau shall assess fines
35 for violations of this paragraph pursuant to Section 1383.2 of Title
36 4 of the California Code of Regulations.

37 (2) (A) The upholstered-furniture manufacturer of any covered
38 product sold in California shall provide point-of-sale signs
39 containing the flame retardant chemical statement to the
40 upholstered-furniture retailer for each product shipped to

California. For in-store sales in California, the upholstered-furniture retailer in California shall display the point-of-sale sign next to the price or description of the covered product. The point-of-sale sign shall be sized and placed so as to remain clear and conspicuous to consumers, and the minimum size of type shall be at least 0.2 inches in height.

(i) For sales of covered products sold in California via an Internet Web site, the upholstered-furniture retailer in California shall place the point-of-sale sign containing the flame retardant chemical statement clearly and conspicuously, and in close proximity to the covered product's price, on each Internet Web site page that contains a detailed description of the covered product and its price. The point-of-sale sign shall be sized and placed so as to remain clear and conspicuous to a consumer viewing the page.

(ii) For sales of covered products sold in California through paper catalogs, the upholstered-furniture retailer in California shall place the point-of-sale sign containing the flame retardant chemical statement clearly and conspicuously, and in close proximity to the covered product's price, on each page that contains a detailed description of the covered product and its price. The point-of-sale sign shall be sized and placed so as to remain clear and conspicuous to consumers.

(B) The bureau shall assess fines for violations of this paragraph in accordance with the factors described in subdivision (e) and the following schedule:

(i) The fine for the first violation shall be not less than one thousand dollars (\$1,000) but not more than two thousand five hundred dollars (\$2,500).

(ii) The fine for the second violation shall be not less than two thousand five hundred dollars (\$2,500) but not more than five thousand dollars (\$5,000).

(iii) The fine for the third violation shall be not less than five thousand dollars (\$5,000) but not more than seven thousand five hundred dollars (\$7,500).

(iv) The fine for any subsequent violation shall be not less than seven thousand five hundred dollars (\$7,500) but not more than ten thousand dollars (\$10,000).

(c) If flame retardant chemicals are added to a covered product sold in California, the upholstered-furniture manufacturer shall

1 *make good faith efforts to determine the various flame retardant*
2 *chemicals used in its products and report this information*
3 *semi-annually to the bureau. The bureau shall make this*
4 *information publicly available on its Internet Web site. If*
5 *information on the specific flame retardant chemicals used in the*
6 *covered product is not known to the upholstered-furniture*
7 *manufacturer, the upholstered-furniture manufacturer may report*
8 *the trade name of the chemical mixture used.*

9 *(d) (1) (A) If any flame retardant chemical was added to the*
10 *covered product or any component thereof sold in California, the*
11 *upholstered-furniture manufacturer of the covered product shall*
12 *retain sufficient documentation to show the chemicals and the*
13 *amounts of the chemicals that were added.*

14 *(B) If no flame retardant chemicals were added to the covered*
15 *product sold in California, the upholstered-furniture manufacturer*
16 *of the covered product sold in California shall retain*
17 *documentation that no flame retardant chemicals were added. A*
18 *written statement by the supplier of each component of the furniture*
19 *attesting under penalty of perjury that no flame retardant chemicals*
20 *were added shall be sufficient documentation.*

21 *(2) The bureau shall ensure compliance with labeling and*
22 *documentation of chain of custody requirements in this section.*

23 *(3) (A) Upon request, an upholstered-furniture manufacturer*
24 *of a covered product sold in California shall provide to the bureau,*
25 *within 30 days of the request, documentation establishing the*
26 *accuracy of the flame retardant chemical statement on the label*
27 *and sign required by subdivision (b).*

28 *(B) The bureau shall assess fines of not less than two thousand*
29 *five hundred dollars (\$2,500) but not more than fifteen thousand*
30 *dollars (\$15,000) in accordance with the factors described in*
31 *subdivision (e) for the failure of the upholstered-furniture*
32 *manufacturer to maintain the required chain of custody*
33 *documentation.*

34 *(C) The bureau shall provide the Department of Toxic*
35 *Substances Control with samples of the covered product or*
36 *components thereof sold in California from products marked*
37 *“contains NO added flame retardant chemicals” for testing for*
38 *the presence of added flame retardant chemicals. The department*
39 *shall provide the results of all testing to the bureau.*

(D) (i) If the department's testing shows that a covered product labeled as "contains NO added flame retardant chemicals" is mislabeled because it contains added flame retardant chemicals, the bureau may assess fines for violations against upholstered-furniture manufacturers of the covered product and component manufacturers to be held jointly and severally liable for the violation.

(ii) A fine for a violation of this subparagraph relating to mislabeling shall be assessed in accordance with factors described in subdivision (e) and the following schedule:

(I) The fine for the first violation shall be not less than one thousand dollars (\$1,000) but not more than two thousand five hundred dollars (\$2,500).

(II) The fine for the second violation shall be not less than two thousand five hundred dollars (\$2,500) but not more than five thousand dollars (\$5,000).

(III) The fine for the third violation shall be not less than five thousand dollars (\$5,000) but not more than seven thousand five hundred dollars (\$7,500).

(IV) The fine for any subsequent violation shall be not less than seven thousand five hundred dollars (\$7,500) but not more than ten thousand dollars (\$10,000).

(iii) If the department's testing shows that a covered product labeled as "contains NO added flame retardant chemicals" is mislabeled because it contains added flame retardant chemicals, in addition to a fine or any other request, the bureau may request that the labels and signs required by subdivision (b) for covered products that belong to the same stock keeping unit (SKU) currently produced by the manufacturer be corrected to reflect that flame retardant chemicals are added to the covered product.

(iv) If the department's testing shows that a covered product labeled as "contains NO added flame retardant chemicals" is mislabeled because it contains added flame retardant chemicals, in addition to a fine or any other request, the bureau may request additional testing of more products belonging to the same stock keeping unit (SKU) at the manufacturer's expense to verify the accuracy of the label or sign required by subdivision (b) for covered products if the manufacturer wishes to retain the "contains NO added flame retardant chemicals" designation on the label or sign required by subdivision (b).

1 (E) An upholstered-furniture manufacturer of covered products
2 and component suppliers shall be jointly and severally liable for
3 violations of chain of custody requirements in this subdivision.

4 (e) (1) Notwithstanding any other law, the bureau may issue a
5 citation, including a citation with a fine, for a violation of this
6 section, and shall make citation information available to the public.

7 (2) In determining the amount of the fine associated with a
8 citation, the bureau shall consider the following factors:

9 (A) The nature and severity of the violation.

10 (B) The good or bad faith of the cited person.

11 (C) The history of previous violations.

12 (D) Evidence that the violation was willful.

13 (E) The extent to which the cited person or entity has cooperated
14 with the bureau.

15 (3) (A) The bureau shall adjust all minimum and maximum
16 fines imposed by this section for inflation every five years.

17 (B) The adjustment shall be equivalent to the percentage, if any,
18 that the Consumer Price Index at the time of adjustment exceeds
19 the Consumer Price Index at the time this section goes into effect.
20 Any increase determined under this paragraph shall be rounded
21 as follows:

22 (i) In multiples of ten dollars (\$10) in the case of penalties less
23 than or equal to one hundred dollars (\$100).

24 (ii) In multiples of one hundred dollars (\$100) in the case of
25 penalties greater than one hundred dollars (\$100) but less than
26 or equal to one thousand dollars (\$1,000).

27 (iii) In multiples of one thousand dollars (\$1,000) in the case
28 of penalties greater than one thousand dollars (\$1,000).

29 (4) It shall be the duty of the bureau to receive complaints from
30 consumers concerning covered products sold in California.

31 (f) The bureau shall establish requirements for providing
32 translations of the flame retardant chemical statement in other
33 languages on the sign required by subdivision (b) as may be
34 needed.

35 (g) The bureau may adopt regulations pursuant to the
36 Administrative Procedure Act (Chapter 3.5 (Commencing with
37 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
38 Code) in order to carry out the provisions of this section.

39 SEC. 3. No reimbursement is required by this act pursuant to
40 Section 6 of Article XIII B of the California Constitution because

1 *the only costs that may be incurred by a local agency or school*
2 *district will be incurred because this act creates a new crime or*
3 *infraction, eliminates a crime or infraction, or changes the penalty*
4 *for a crime or infraction, within the meaning of Section 17556 of*
5 *the Government Code, or changes the definition of a crime within*
6 *the meaning of Section 6 of Article XIII B of the California*
7 *Constitution.*

8 ~~SECTION 1. Section 71113 of the Public Resources Code is~~
9 ~~amended to read:~~

10 ~~71113. (a) On or before January 1, 2016, the Secretary for~~
11 ~~Environmental Protection shall reconvene the Working Group on~~
12 ~~Environmental Justice that is established pursuant to this section~~
13 ~~to assist the California Environmental Protection Agency to~~
14 ~~redevelop, on or before July 1, 2016, an agencywide strategy for~~
15 ~~identifying and addressing any gaps in existing programs, policies,~~
16 ~~or activities that may impede the achievement of environmental~~
17 ~~justice.~~

18 ~~(b) The working group shall be composed of the Secretary for~~
19 ~~Environmental Protection, the Chairs of the State Air Resources~~
20 ~~Board and the State Water Resources Control Board, the Director~~
21 ~~of Toxic Substances Control, the Director of Pesticide Regulation,~~
22 ~~the Director of Environmental Health Hazard Assessment, the~~
23 ~~Director of Planning and Research, and the Director of Resources~~
24 ~~Recycling and Recovery.~~

25 ~~(c) The working group shall review the actions taken pursuant~~
26 ~~to this subdivision before January 1, 2015, and do all of the~~
27 ~~following with regard to updating or revisiting those actions on or~~
28 ~~before April 1, 2016:~~

29 ~~(1) Examine existing data and studies on environmental justice,~~
30 ~~and consult with state, federal, and local agencies and affected~~
31 ~~communities.~~

32 ~~(2) Recommend criteria to the Secretary for Environmental~~
33 ~~Protection for identifying and addressing any gaps in existing~~
34 ~~programs, policies, or activities that may impede the achievement~~
35 ~~of environmental justice.~~

36 ~~(3) Recommend procedures and provide guidance to the~~
37 ~~California Environmental Protection Agency for the coordination~~
38 ~~and implementation of intraagency environmental justice strategies.~~

1 ~~(4) Recommend procedures for collecting, maintaining,~~
2 ~~analyzing, and coordinating information relating to an~~
3 ~~environmental justice strategy.~~

4 ~~(5) Recommend procedures to ensure that public documents,~~
5 ~~notices, and public hearings relating to human health or the~~
6 ~~environment are concise, understandable, and readily accessible~~
7 ~~to the public. The recommendation shall include guidance for~~
8 ~~determining when it is appropriate for the California Environmental~~
9 ~~Protection Agency to translate crucial public documents, notices,~~
10 ~~and hearings relating to human health or the environment for~~
11 ~~limited-English-speaking populations.~~

12 ~~(6) Hold public meetings to receive and respond to public~~
13 ~~comments regarding recommendations required pursuant to this~~
14 ~~section, prior to the finalization of the recommendations. The~~
15 ~~California Environmental Protection Agency shall provide public~~
16 ~~notice of the availability of draft recommendations at least one~~
17 ~~month prior to the public meetings.~~

18 ~~(7) Make recommendations on other matters needed to assist~~
19 ~~the agency in developing an intraagency environmental justice~~
20 ~~strategy.~~